

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1068

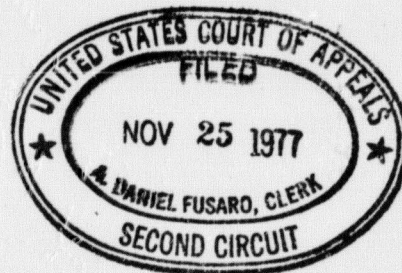
To be argued by
STEVEN LLOYD BARRETT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
BARBARA MEYERS, :
:
Defendant-Appellant. :
-----X

B
p/s

Docket No. 77-1068



APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

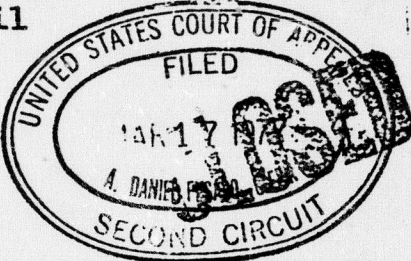
STEVEN LLOYD BARRETT,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

U.S. TITLE/SECTION
18-1708

OFFENSES CHARGED
Theft of mail

ORIGINAL COUNTS
1



SUPERSEDING COUNTS

U.S. MAG. CASE NO. **76 M**

BAIL • RELEASE
☐ AMT ☐ Fugitive
☐ Denied ☐ Set ☒ Pers. Re ☐ PSA
\$ **1** -000
Date **11-76**
☐ Bail Not Made
☐ Status Changed (See Docket) ☐ 3rd Prty Cust

II. KEY DATES & INTERVALS

ARREST or
U.S. Custody Began
Summons Served
First Appearance
3-11-76

INDICTMENT ☐
High Risk Date
Indict. Waived ☐
In Charging District
Superseding ☒ Indict/info ☐
8/27/76

ARRAIGNMENT ☐
Trial Set For
1st Plea **II**
Final Plea **9/8/76**

TRIAL
Voor Dire ☒
Trial Began **11/14/76**
Trial Ended **11/14/76**

SENTENC
Disposition of Charges
11/28/76
☐ On All Ch
☐ On Less Offense
☐ Acquitted
☐ Dismissed: ☐ WOP: ☐ On Government's Motion

MAGISTRATE

Search Warrant Issued
Summons Issued
Arrest Warrant Issued
COMPLAINT
OFFENSE (In Complaint)

DATE
3-11-76 VAC/070A

INITIAL/NO.
Unlawful possession of stolen mail ; 18:1708 and 2

INITIAL APPEARANCE DATE **3-11-76**
PRELIMINARY EXAMINATION OR REMOVAL HEARING
☒ WAIVED ☐ NOT WAIVED
☐ INTERVENING INDICTMENT

INITIAL/NO.
3-30-76

OUTCOME:
☐ DISMISSED
☒ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW:

Tape Number

U.S. Attorney or Asst.
Stanley Teitler

ATTORNEYS
Defense: ☐ CJA ☒ Ret: ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CO
Aaron Sacher, Esq. RICHARD E. LEAVITT
32 Court St., Bklyn N
212-875-0120 1120

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DE
6-14-76		Information filed.	
7/16/76		Before PRATT, J. - Case called. Deft present, Counsel not present. Deft arraigned & the court enters a plea of not guilty on behalf of the deft - Court to assign counsel. Adjd to 8/4/76 at 1:30 p.m. for all purposes.	
8/4/76		Before PRATT, J. - Case called- Deft and counsel present-Adjd without date	
8-27-76		Before MISHLER, CH J -SUPERSEDING INDICTMENT FILED (S)	
9/3/76		Before PRATT, J. - Case called. Deft & ounsel not present. Adjd to 9/7/76 at 1:45 p.m. for pleading.	9/3/76
9-7-76		Notice of readiness for trial filed	
9/7/76		Before PRATT, J. - Case called. Deft & ounsel present. Deft arraigned and on her own behalf enters a plea of not guilty to 76 CR 392(S) - Bail Continued. Adjd to 9/20/76 at 1:35 for status conference.	9/7/76 (See)

20/76 Waiver of personal appearance at pretrial conferences, failed.

20/76 Before PRATT, J.- Case called. Deft & Counsdl present. Adj'd to 11/1/76 at 10:00 a.m. or subject to follow USA vs Rodriguez (75 CR 112).

28-76 Before Pratt, J.- Case Called. Deft. & Counsel present. Trial to commence upon completion of U.S.C. -vs- Rutolo.

17-76 Before Pratt, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Jurors were selected and sworn. Trial to continue on 11-18-76 at 10:00 A.M.

18-76 Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests- Deft's. motion to dismiss is denied. Deft. rests. Govt sums up. Deft. sums up. Govt's. sur-rebuttal. Judge charges the jury at 4:30 P.M. Trial to continue on 11-19-76 at 4:30 A.M.

19-76 Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Jury began it's deliberations after the alternate jurors were designated and excused and the Marshals were sworn. The jury returns from it's deliberations at 4:00 P.M. with a verdict of guilty as charged to the Superseding indictment. Trial concluded. Jury excused. Bail continued. Orders of Sustenance signed. Adj'd. without date for sentence.

22-76 By Pratt, J.- Orders of Sustenance (2) filed.

28-77 Before Pratt, J.: case called - deft & counsel present - deft sentenced to imprisonment for a period of 3 years, on condition that the deft serve in a jail type institution for a period of 3 months. Execution of the remainder of the sentence is suspended and the deft is placed on probation for a period of 4 years. Probationary period to commence upon the release of deft from confinement. If deft files a Notice of Appeal within one week of sentence then there is a stay of execution of sentence pending determination of appeal. If deft does not file Notice of Appeal within a week of sentence then deft to surrender on 2/4/77 at 10:00 A.M. Notice of appeal to be filed in forma pauperis. On motion of AUSA Edward Thompson the information in 76 CR 392 is dismissed. Judgment and commitment filed. Certified copies to Probation, Marshal and US ATTY.

28-77 By Pratt, J.- Order dismissing 76 CR 392 filed.

2-77 Notice of Appeal filed.

2-77 Duplicate notice of appeal and copy of docket entries mailed to the C of A.

2-77 Form B filed.

9-77 Rule 35 motion filed for reduction of sentence imposed

17-77 By PRATT, J - Order filed denying defts motion for reduction of sentence - copies forwarded

17-77 Scheduling order filed recvd from the court of appeals that the record be docketed on or before 3-14-77

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A. Examinat
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U.S.C. 425

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C. State or Fe
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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

BARBARA MEYERS

76

392

Yr. Docket No. De

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA			
(Document No.)		(a)	(b)	(c)	(d)
3-2-77	3 stenographers transcripts filed (one dated Nov. 17, Nov.18, and Nov. 19, 1976)				
3-8-77	Voucher for expert services filed forwarded to Washington for payment (E.Karr-trial transcript)				
A TRUE COPY ATTEST 3/14/77 LEWIS ORCEL CLERK BY <i>[Signature]</i> DEPUTY CLERK					

763178

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

AUG 27 1976

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against

BARBARA MEYERS,

Defendant.

----- X

I N D I C T M E N T

Cr. No. 76 Cr. 392(S)
(T.18, U.S.C., §1708)

THE GRAND JURY CHARGES:

~~200-1-65~~

On or about the 3rd day of December, 1975, within the Eastern District of New York, the defendant, BARBARA MEYERS, did unlawfully have in her possession United States Treasury Check Number 59,349,875, dated December 3, 1975, payable to Giuseppina Scala, 8682 17th Avenue, Brooklyn, New York, 11214, in the amount of One Hundred Sixty Four Dollars and Ninety Cents (\$164.90), said check having been the contents of a letter stolen from an authorized depository for mail matter, the defendant, BARBARA MEYERS, knowing the same to have been stolen. (Title 18, United States Code, Section 1708):

A TRUE BILL

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Catherine Luma
Deputy FOREMAN

No. _____

UNITED STATES _____ **DISTRICT COURT**

EASTERN _____ *District of* **NEW YORK**

_____ **CRIMINAL** _____ *Division*

THE UNITED STATES OF AMERICA

vs.

_____ **BARBARA MEYERS,**

_____ *Defendant.*

INDICTMENT

Title 18, U.S.C., §1708 .

_____ *A true bill,*

_____ *Foreman.*

Filed in open court this _____ *day*
of _____, *A. D. 19* _____

_____ *Clerk.*

Bail, \$ _____

STANLEY A. TEITLER, AUSA ^{GPO 902-482}
330-7029

20 Members of the jury, we are now at the
21 stage of the trial where you are about to
22 undertake your final function as jurors. Your
23 duty is a serious and important one. In
24 performing it you actively share with me the
25 responsibility of administering justice according

1
2 to the law and the evidence in this case.
3 Your oath as jurors obliges you to discharge
4 this final task in an attitude of complete
5 fairness and impartiality and, as was emphasized
6 by me when you were selected as jurors, without
7 bias or prejudice, for or against the govern-
8 ment or the defendant as parties to this
9 controversy. You must not permit yourselves
10 to be governed by sympathy or any other
11 consideration which is not founded in the
12 evidence and in these instructions on the law.

13 The case is important to the government,
14 since the enforcement of the criminal laws
15 is of prime importance to the welfare of the
16 community.

17 Obviously, it is equally important to
18 the defendant who is charged with a serious
19 crime and has the right to receive a fundamen-
20 tally fair trial, the community has an interest
21 in that too.

22 The fact that the government is a party
23 entitles it to no greater consideration than
24 that accorded to any other party to a litigation.

25 By the same token, it is entitled to no

1
2 less consideration.

3 All parties, the government and
4 individuals alike, stand as equals before the
5 bar of justice.

6 In this charge I shall describe for you
7 first the general principals applicable to
8 all criminal trials, then the nature of the
9 charge in this case, and then the specific
10 rules of law which are applicable to the
11 charge and finally something about how you
12 should reach a verdict.

13 Your final role is to define and pass
14 upon the fact issue in this case.

15 You are the sole and exclusive judges
16 of the facts.

17 You determine the weight of the
18 evidence;

19 You appraise the credibility of the
20 witness;

21 You draw the reasonable inference from
22 the evidence.

23 My function now is to instruct you as
24 to the law, and it is your duty to accept
25 these instructions as to the law and to apply

to the facts as you may find them.

With respect to any fact matter, it is your recollection, and yours alone that governs.

Anything that counsel, either for the government or the defense, may have said with respect to matters in evidence, rather during the trial, in a question, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, as to any matter in evidence, anything that I may have said during this trial, or may refer to during the course of these instructions, is not to be taken in place of your own recollection. I have no view of guilt or innocence of this defendant.

The indictment is merely an accusation, a charge.

It is not evidence of the defendant's guilt, since the defendant has pleaded not guilty, the government has the burden of proving the charges against the defendant beyond a reasonable doubt.

A defendant does not have to prove his

innocence.

On the contrary, the defendant is presumed to be innocent of the accusations contained in the indictment.

This presumption of innocence was in her favor at the start of the trial; it continued in her favor throughout the entire trial; it is in her favor even as I instruct you now, and it remains in her favor during the course of your deliberations in the jury-room. It is removed only if and when you are satisfied that the government has sustained its burden of proving the defendant guilty beyond a reasonable doubt. If the government has failed to sustain its burden, then the presumption of innocence alone is sufficient to acquit her.

I have used the term reasonable doubt. What is reasonable doubt?

The words almost define themselves, that there is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the

evidence.

Reasonable doubt is a doubt which appeals to your reason; to your judgment; to your common sense and your experience.

It is not caprice, whim, speculation, conjecture or suspicion, It is not an excuse to avoid the performance of an unpleasant duty; it is not sympathy for the defendant.

If, after a fair and partial consideration of all the evidence, you can, candidly and honestly, say you are not satisfied of the guilt of a defendant, that you do not have an obliging conviction of her guilt -- in sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of importance to yourselves. then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, if after such a fair and impartial consideration of all the evidence, you can, candidly and honestly say you do have an obliging conviction of the defendant's guilt -- such a conviction as you would be willing to act upon, in important and weighty

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2 matters in the personal affairs of your own
3 life, then you have no reasonable doubt and
4 under such circumstances it is your duty to
5 convict.

6 One final word on this subject.

7 Reasonable doubt does not mean a
8 positive certainty, or beyond all possible
9 doubt.

10 If that were the rule, few persons,
11 however guilty they might be, would be
12 convicted.

13 Since it is practically for a person
14 to be absolutely and completely convinced of
15 any controverted fact, the law in a criminal
16 case is that it is sufficient if the guilt
17 of a defendant is established beyond a
18 reasonable doubt -- not beyond all possible
19 doubt.

20 Nor is it the government's burden to
21 prove each and every bit of evidence to be
22 true beyond a reasonable doubt. It's burden
23 is to prove beyond a reasonable doubt and
24 each every essential element of the crime
25 charged.

2 Reasonable doubt may arise from the
3 failure of the government to produce evidence.
4 The defense is not obligated to present
5 evidence in her favor. She had the right to
6 rely on the failure by the government to prove
7 its case. She may also rely on evidence brought
8 out on cross examination of witnesses called
9 by the government. On the other hand, the
10 defendant has the power to subpoena anyone in
11 support of her position if she so chooses, and
12 she may exercise that power if she chooses.

13 I have used a term "inference" and
14 "presumption".

15 An inference is a conclusion which
16 reason and common led you to draw from the facts
17 which have been established by the evidence in
18 the case. The jury may draw the inference.

19 Evidence may be either direct or
20 circumstantial.

21 Direct evidence is that which is given
22 of actual or personal knowledge of the fact in
23 question. One, who with his own eyes sees a
24 man fire a gun at another man and tells what he
25 saw has given direct evidence of the shooting.

In the absence of direct evidence, however, reliance is often placed upon circumstantial evidence which does not tend to establish the fact in question directly, but rather does so indirectly by establishing surrounding circumstances from which the facts in question can be inferred.

Thus, if our witness to the shooting had not actually been there to see it, but after hearing a shot arrived moments later, and saw one man holding a smoking gun and the other lying on the ground, his testimony would tend to prove the shooting but, it would be indirect or circumstantial evidence since it would be evidence of surrounding or collateral facts from which the fact in question might be inferred.

What is the evidence in the case which you may consider? It consists of:

One, sworn testimony of witnesses regardless of what may have called them;

Two, exhibits received in evidence regardless of who may have produced them;

Three, facts which may have been admitted

or stipulated;

What is not evidence?

One, statements or arguments of counsel
in opening, summation or made during the trial;

Two, statements of the Court;

Three, evidence stricken from the record;

Four, questions to which objections
has been sustained -- do not speculate on what
the answer might have been had the Court
permitted the answer.

Return now to the charge made in the
indictment against the defendant. At the outset
I want to reemphasize that the indictment
merely states the charge against the defendant
and that it has no weight as evidence -- none
at all.

The indictment charges the defendant
with one offense, it alleges that:

On or about the 3rd day of December,
1975, within the Eastern District of New York
the defendant Barbara Meyers did unlawfully
have in her possession (a) United States
Treasury check # (ED) 59349875 and dated
December 3, 1975 (which was) payable to

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2 Giosebpina Scala, (living at) 3682 17th
3 Avenue, Brooklyn, New York in the amount of
4 \$164.90 (that this check had been the contents
5 of a letter stolen from an authorized
6 depository for mail matter and that at the
7 time that the defendant possessed the check,
8 she knew that it had been stolen.

9 The indictment charged the defendant
10 with violating Section 1708 of Title 18 of
11 United States Code which provides that whoever
12 has in his possession any letter or any
13 article or anything contained therein, which
14 has been stolen from any authroized depository
15 or mail matter knowing the same to have been
16 stolen shall be guilty of a crime.

17 In order to establish that the
18 defendant is guilty as charged, the government
19 must prove beyond a reasonable doubt each of
20 four essential elements:

21 1. That, at the time and place charged
22 the defendant wilfully had in her possession
23 a check;

24 2. That a letter containing the check
25 had previously been deposited in and sent

through the mails;

3. That the letter containing the check had been stolen from the mails;

4. That at the time of her possession of the check, the defendant knew that it had been stolen.

As to the first element, that the defendant wilfully had a check in her possession:

An act is done "wilfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

As to the fourth element, that the defendant knew that the check in her possession was stolen, it is not necessary that the defendant knew that the check was stolen from the mails. It is necessary only that at the time she had the check in her possession the defendant knew that the check was stolen.

And like any other factual indication in the case, knowledge may be established by direct or circumstantial evidence.

Possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably, draw the inference and find, in the light of surrounding circumstances, shown by the evidence in the case, that the person in possession knew the property had been stolen. However, you are never required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits the jury to draw from the possession of recently stolen property.

The term "recently" is a relative term, and has no fixed meaning. Whether the property may be considered as recently stolen depends upon the nature of the property, and all the facts and circumstances shown by the evidence in the case.

If you find beyond a reasonable doubt from the evidence in the case that the check described in the indictment was stolen from the mail, and that, while recently stolen, the check

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2 was in the possession of the accused, you may,
3 but need not, from these facts, draw the
4 inference that the check was possessed by the
5 accused with knowledge that the check was
6 stolen unless possession of the recently
7 stolen property by the accused is explained to
8 your satisfaction.

9 The government must prove every element
10 of the crime charged beyond a reasonable doubt.
11 If the government fails as to any element, you
12 must acquit.

13 The fact that one element of the crime
14 may or may not exist has no bearing upon any
15 other element of the crime charged.

16 You may not infer solely from the
17 existence of one element of the crime, if you
18 conclude that the element has been established,
19 the existence of any other element of the
20 crime.

21 If any element of the crime has not
22 been established beyond a reasonable doubt,
23 your verdict must be not guilty. On the
24 other hand, you must convict the defendant
25 if each of the elements of any crime has been

proved beyond a reasonable doubt.

The government has presented evidence that it claims establishes that the defendant engaged in other transactions similar to that charged in the indictment. You must not take this evidence as evidence of the defendant having a criminal character or a criminal disposition. And you must remember that the defendant may be found guilty only if you find beyond a reasonable doubt that she committed the offense charged in this indictment.

But, if you find that the government has clearly conclusively established that the defendant performed acts similar to that charged in the indictment, then you may use evidence of those similar acts to help you determine 1. whether the defendant "wilfully" possessed the check in question here and 2. whether at the time she possessed the check she knew that it was stolen. But, you must not rely upon this evidence of other acts for any other purpose. Remember that the defendant is being tried with respect to a check which she allegedly possessed on or about the 3rd of

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2 December in 1975. And that it would be
3 improper for you to convict of a crime not
4 charged in the indictment. Therefore, do not
5 concern yourselves with any possible criminal
6 consequence of the similar transactions
7 alleged by the government.

8 You may consider, in determining whether
9 the defendant acted wilfully, the fact, if you
10 find it true, that the defendant engaged in
11 other transactions similar to that charged
12 in the indictment.

13 The fact, however, that the accused may
14 have committed another offense at some time
15 is not any evidence of proof whatever that
16 at another time that the accused committed the
17 offense charged in the indictment even though
18 both offenses are of a like nature.

19 Evidence of an alleged prior or later offense
20 of a like nature may not be considered by the
21 jury in determining whether the accused did
22 the act charged in the indictment. Nor may
23 such evidence be considered for any other
24 purpose whatever, unless the jury first finds
25 that other evidence in the case, standing alone,

1
2 establishes beyond a reasonable doubt, that the
3 accused did the act charged in the indictment,
4 leaving aside only the question of whether
5 the accused did it wilfully.

6 If the jury should find beyond a
7 reasonable doubt from the evidence in the
8 case that the accused did the act charged in
9 the indictment, then the jury may consider the
10 evidence as to an alleged earlier offense
11 of a like nature, in determining the state of
12 mind with which the accused did the act charged
13 in the indictment.

14 There was testimony by Mr. "DiMicchio"
15 that he had engaged in certain transactions
16 with the defendant in 1972 and 1973 and prior
17 to the events charged in the indictment. Mr.
18 "DiMitrio" also testified to statements by the
19 defendant after "Dimitrio's" arrest and while
20 he was cooperating with the government. These
21 acts and statements are not to be taken by you
22 as evidence of a crime. But, if you believe
23 this testimony, and if you find the government
24 has established that the defendant performed
25 those acts, or made those statements, and if

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2 you find that they were similar to acts at
3 issue here, then you may use the testimony
4 of those similar acts to help you determine
5 whether the defendant's acts relating to the
6 charge in this indictment were knowingly or
7 wilfully performed by the defendant, or were
8 they were innocently performed.

9 However, the defendant is here only to
10 defend the charge in this indictment which
11 alleges conspiracy between 8/5/74 and 3/10/75
12 and in addition 9/9/74 and 3/10/75. It would
13 be improper for you to convict her of a crime
14 not charged in this indictment. Therefore,
15 do not concern yourself with any possible
16 criminal consequences of the 1972-73 events
17 or the discussion with Mr. "DiMitrio" after
18 the time of his arrest on 4/11/75.

19
20 (Continued on next page.)
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25

A difficult aspect of any juror's duty is to determine the credibility of the witnesses and to weigh their testimony. In this case it is a critical problem.

You, the jurors, are the sole judges of the credibility of the witnesses. Credibility refers to the believability of their testimony and the weight their testimony deserves.

Your determination of the issues of credibility very largely must depend upon the impression that a witness made upon you as to whether or not he was telling the truth or giving you an accurate version of what occurred.

When you walk in the door of that courtroom and sit in the jurybox, while the trial is going on, when you are deliberating in the juryroom, you have your common sense, your good judgment and your experience with you.

You decide whether or not a witness was straightforward and truthful, whether the witness attempted to conceal anything;

Whether the witness has a motive to testify falsely;

Whether there is any reason why the witness might color his testimony.

In other words, what you try to do, to use vernacular, is size the person up just as you would do in any important matter where you were undertaking to determine whether or not a person is truthful, candid, and straightforward.

Scrutinize the testimony given, and the circumstance under which each witness testified, and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witnesses

1. Intelligence;
2. Motive and state of mind;
3. Demeanor and manner while on the witness stand;
4. The witness' own ability to observe the matters as to which he has testified, whether he shall have impressed you as having an accurate recollection of these matters;
5. The relation each witness might bear to either side of the case;

6. The manner in which each witness might be effected by the verdict;

7. The extent to which, if at all, each witness is either supported or contradicted by other evidence.

Evidence that at some other time a witness has said or done something which is inconsistent with the witness' testimony at the trial may be considered by you for the purpose of judging the credibility of the witness. If adopted by the witness, that is if the witness has admitted before you that he made the prior statement, it may also be used as affirmative evidence in the case. You may also consider the failure of the witness to disclose information on prior occasions, when the opportunity to do so presented itself, as inconsistent with that witness' testimony at the trial.

Whether a prior statement is inconsistent is a fact question solely for your determination. You also determine whether the failure of a witness to reveal information prior to his testifying before you in reports or in statements

1
2 he may have made inconsistent with his
3 present testimony. In making that determination
4 you should consider all the facts and
5 circumstances attendant at the time of making
6 the prior statement or the omission of
7 information. In determining whether the
8 prior statement is inconsistent with the
9 testimony given before you, you may take into
10 consideration the nature of the examination
11 here, the purpose of the statements on the
12 prior occasion. You may take into consideration
13 normal variations in retelling an event to
14 determine whether the statements are truly
15 inconsistent or merely a difference in
16 describing an occurrence.

17 It is for you and you alone to determine
18 whether an inconsistency is to a material or
19 immaterial fact, or what effect the
20 inconsistency has on the witness' credibility.

21 A witness, however, may be inaccurate,
22 contradictory, or even untruthful in some
23 respects, and yet be entirely credible in the
24 essentials of his testimony.

25 The ultimate question for you to decide

1
2 in passing upon credibility is did the witness
3 tell the truth here before you as to essential
4 matters.

5 If you find that any witness -- and
6 this applies alike to government and defense --
7 wilfully testified falsely as to any material
8 facts, you have a right to reject the testimony
9 of that witness in its entirety, or you may
10 accept that part or portion which you believe
11 to be credible.

12 The fact that one government witness
13 was a government employee does not entitle
14 his testimony to any greater weight or
15 consideration than that afforded to any other
16 witness in the case.

17 You will evaluate his credibility the
18 same way you do that of any other witness.

19 Much of the testimony in this case comes
20 from Donna Chiarello who claims to have joined
21 with the defendant in committing the crime
22 charged. Thus she claims to be what the law
23 describes as an "accomplice".

24 An accomplice is one who has united with
25 another person in the commission of a crime,

1
2 voluntarily and with common intent. An
3 accomplice does not become incompetent as a
4 witness because of a participation in the
5 crime charged. If accomplices could never be
6 used in court there would be many cases
7 involving real and serious guilt in which
8 convictions would not be obtainable. Their
9 testimony, however, must be received with
10 caution and great care and given such weight
11 as you deem it entitled to receive under all
12 the circumstances of the entire case. The
13 testimony of an accomplice alone, if believe
14 by the jur, may be of sufficient weight to
15 sustain a verdict of guilty, even though not
16 corroborated or supported by other evidence.
17 However, I reemphasize that the jury should
18 keep in mind that such testimony is always
19 to be received with caution and weight with
20 great card.

21 You should never convict a defendant
22 upon the unsupported testimony of an accomplice,
23 unless you believe the unsupported testimony
24 beyond a reasonable doubt.

25 The law never imposes upon a defendant

1
2 in a criminal case the burden of duty of
3 producing any evidence. But, a defendant may
4 present himself as a witness, as she did in
5 this case. In that event, the defendant is
6 subject to cross examination, as you have
7 observed, and her credibility is for you, as
8 the jury, to determine, in the same manner as
9 other witnesses.

10 You may consider that a defendant has
11 a strong motive to lie to protect herself,
12 but you may also consider that she takes a
13 real risk in subjecting herself to cross
14 examination and you must decide whether to
15 believe her or how much to believe.

16 Now, the law permits, but does not
17 require the defendant to testify on her own
18 behalf. Obviously a defendant has a deep
19 personal interest as a result of her prosecution,
20 indeed it is fair to say she has the greatest
21 interest in its outcome.

22 Interest creates a motive for false
23 testimony in a defendant's interest in the
24 result of her trial is of a character possessed
25 by no other witness.

1
2 In appraising her credibility, you may
3 take the fact into consideration. However,
4 I want to say this with equal force to you,
5 it by no means follows that if a person has
6 a vital interest in the end result, that she
7 is not capable of telling a truthful and
8 straightforward story.

9
10 It is for you to decide to what extent
11 if at all defendant's interest has effected
12 or colored her testimony might my, could be
13 used against her in court that she was entitled
14 to the assistance of counsel before making
15 any statement, either oral or in writing, and
16 that if she was without money or means to
17 retain counsel of her own choice, an attorney
18 would be appointed to advise and represent
19 her free of cost or obligation.

20 If the evidence in the case does not
21 convince beyond a reasonable doubt that a
22 statement was made voluntarily and intentionally
23 you should disregard it entirely. On the
24 other hand, if the evidence in the case does
25 show beyond a reasonable doubt that a statement
was in fact voluntarily and intentionally made

1
2 by the defendant, you may consider it as
3 evidence in the case against the defendant
4 who voluntarily and intentionally made the
5 statement.

6 The weight of the evidence is not
7 necessarily determined by the number of witnesses
8 testifying on either side. You should consider
9 all the facts and circumstances in evidence to
10 determine which of the witnesses are worthy of
11 greater credence. You may find that the
12 testimony of a smaller number of witnesses on
13 one side is more credible than the testimony
14 of a greater number of witnesses on the other
15 side.

16 If any facts permit inferences which are
17 equally consistent with guilt and with innocence,
18 you may not consider those facts as evidence of
19 guilt. But, if you are satisfied from the
20 evidence as a whole that the defendant is guilty
21 beyond a reasonable doubt, you should find the
22 verdict of guilty.

23 At certain times in the trial the
24 attorneys mentioned "3500 material" or documents,
25 that term refers to copies of prior statements

1
2 of its witnesses which the government as
3 required by law, had supplied to the
4 defendant's attorneys to use if they wished
5 in cross examining those witnesses.

6 I have sought not to comment on the
7 evidence in any detail, or to give any
8 impression as to my own view, if I have one,
9 of the relative weight of the evidence. If
10 I have done so, however, I ask you to disregard
11 it entirely, because you are the sole judges
12 of the facts.

13 From time to time in the course of the
14 trial objections have been made and rulings
15 on evidence given. Draw no inference from the
16 comparative frequency of the objections of one
17 or the other side or from the comparative
18 record in having objections sustained. Where
19 an objection to a question has been sustained,
20 disregard the question and draw no inferences
21 from its wording about the answer that might
22 have been given. Where an objection is over-
23 ruled, evidence then received has no special
24 weight just because it was unsuccessfully
25 objected to.

Under your oath as jurors you cannot allow a consideration of the sentence which may be imposed upon the defendant, if she is convicted, to enter into your deliberations, or to influence your verdict in any way. In the event of a conviction, the duty of imposing sentence rests solely with the Court.

Your duty is to decide the case solely upon the evidence, to weigh the evidence in the case, and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and these instructions.

The verdict in each instance must be unanimous.

Each of you, as jurors, are entitled to your own opinion, but each of you should exchange views with your fellow jurors.

That is the very purpose of the jury deliberation to discuss and to consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence, if you can do so without violence

to your own individual judgment.

Each of you must decide the case for yourself after consideration with your fellow jurors.

But, you should not hesitate to change an opinion which, after discussion with your fellow jurors, appears to you to be erroneous.

However, if after carefully considering all the evidence, and the arguments of your fellow jurors, you entertain a conscientious view that differs from others, you are not to yield your judgment simply because you are outnumbered.

Your final vote must reflect your conscientious view as to how the issue should be decided.

The charge here is most serious.

The just determination of this case is important to the public; it is equally important to this defendant.

Under your oath as jurors you must decide this case without fear or favor and solely in accordance with the evidence and the

1
2 law.

3
4 If the government has failed to carry
5 it burden as to the defendant your sworn duty
6 is to acquit; if it has carried its burden
7 as to the defendant you must not flinch from
8 your sworn duty, you must convict.

9
10 If you wish to look at any of the
11 exhibits you may ask for them.

12
13 If you wish to have some of the testimony
14 repeated, you may make the request and I will
15 call you into court and have the reporter
16 locate those portions you desire to hear and
17 read them to you.

18
19 When you retire to the juryroom your
20 first duty will be to elect your foreman or
21 forelady who will preside over the deliberations.
22 During your deliberations, you should the
23 attitude of judges of the facts rather than
24 partisans or advocates. In that way, you will
25 be making a high contribution to the
administration of justice.

The marshals will be available outside
the juryroom to report when you have reached
a verdict or to let the Court know if there are

any questions which you wish to have answered.

When you have reached a verdict and are ready to report simply advise the marshall; but do not disclose to him what your verdict is. I will have your foreman announce it orally back here in the courtroom.

There will now be a short recess during which counsel will review the charge with me to make certain that nothing has been omitted or misspoken.

You may retire to the juryroom, but not discuss the case until I have brought you back once more.

At this point ladies and gentlemen you will recess until 9:30 tomorrow morning. We will not be able to tell you who the alternate jurors will be until 9:30 tomorrow morning.

In the meantime you have the entire case before you including argument and instructions, but still, you must not discuss this case either amongst yourselves or with anyone else. Your deliberations on the case may take place only in the juryroom when all twelve of the deliberating jurors are present.

Charge of the Court

334

So, I am asking you to be back here at 9:30 tomorrow morning. When you are all here I will bring you into the courtroom for a few moments, remind you of a few of the latter portions of the charge which I have just covered and at that time you will commence your deliberations and your discussions amongst yourselves, until then do not discuss the case and I'll see you back here tomorrow morning at 9:30.

(Whereupon at this time the jury was excused for the day.)

* * *

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Ladies and gentlemen of the jury, as I told you at the outset of this case beware of smokescreens that the defense would put up in the case.

I submit to you that as I speak to you the next couple of minutes will prove indeed all the defense did in this case was throw out smokescreen after smokescreen after smokescreen.

1
2 You will recall the defendant is
3 charged with one particular check and that
4 is the Giosebpina Scala check. Government's
5 Exhibit 1 in evidence. United States
6 Treasury check payable to Giosebpina Scala
7 in the amount of \$164.90 which was Social
8 Security check for November, 1975.

9 Now, let's review some of the
10 testimony in this case.

11 If you recall the government's first
12 witness was Giosebpina Scala. Well, you
13 remember Mrs. Scala's testimony. She took the
14 stand, she said she never received the check,
15 she never authorized anybody to cash the
16 check. She never placed that endorsement on
17 the back of the check. She went down on
18 December 3, 1975, you remember there was a
19 lot of cross examination by Mr. Levitt, well
20 December 3rd you're sure it wasn't December
21 8, look at the check.

22 I can't tell the date of the check,
23 maybe it's the 8th, maybe it's the 3rd.
24 Smokescreens, no sense in fact the witness
25 testified social security, she received, she

1
2 supports herself with. Remember, she never
3 got the check. She never got this check, she
4 went down there the mailbox was open, we
5 know why the mailbox was open. We had
6 Donna Chiarello testify how that happened.
7 December 3rd, never received, remember I
8 asked Mrs. Scala do you know Barbara Meyers.
9 No, do you know Donna Chiarello, no. Well,
10 you recall after that government introduced
11 Government's Exhibit #5 in evidence.

12 Let me read that exhibit to you.
13 I, R.L. "Landin", regular dispersement
14 office at the Philadelphia Dispersing
15 Center Division of Dispersement. In fact
16 I'll make it short because, keep in mind
17 you can take any of the exhibits back into
18 the juryroom. You have a right to look at
19 them, indeed I urge you to look at them, see
20 exactly what they say. In any event in short
21 this certificate says I certify that the
22 attached document is a true copy of
23 Treasury Department dispersing records
24 relating to check #593549875 dated December
25 3, 1975 payable to Giosebpina Scala, in short

1
2 you will read it.

3 This certification proves that that
4 check was in the mail. Well, remember I
5 told you there were three elements in this
6 case. Not that the defendant has to know
7 that a check was stolen from the mail, that
8 the United States Congress has chosen to
9 pass Title 18 United States Code 1708 for
10 many reasons and one reason is to protect
11 the integrity of the United States mail.

12 A collateral reason I submit to you
13 is so that people like Giosebpina Scala and
14 other people who are receiving support from
15 United States Social Security receive their
16 check, and so nobody tampers with it, nobody
17 takes it from the United States mail. That
18 is the reason why the statute was passed.

19 That is why in order to invoke the
20 jurisdiction of the federal court I want you
21 to prove that that check was placed in the
22 United States mail. No question about it,
23 here is the certificate received in evidence,
24 that is it. Here's the check. Did Mrs.
25 Scala talk to Mrs. Meyers and say go ahead,

sign my name on it?

No, no question about it.

In fact the only cross examination of that witness was the date. Remember, was it December 3rd and remember Mrs. Scala looking with her glasses well, she testified it was December 3.

One thing we know, on December 3, 1975 Mrs. Scala was entitled to live off the Social Security check which is in evidence in this case and never got it and she never let the defendant Barbara Meyers cash that check, that we know. That is the first element of the crime, the check was placed in United States mails.

Any question about that in any of your minds, we talk about reasonable doubt, is there any doubt about it? I submit to you there is none. The proof in this case is uncontradicted.

Well, the next witness we have the mailing, we have the fact that the check wasn't received, we know the purpose of the check. The next witness was Donna

Chiarello.

The Judge is going to tell you like I told you in the beginning of this case, most people commit crimes and they do it with other people, do not commit crimes with people like yourselves who are on the jury. People who commit crimes with other criminals. Donna Chiarello took the stand, Donna Chiarello participated in this crime, the Judge is going to tell you an accomplice's testimony should be weighed cautiously, Rightly so, after all it's somebody that participated in a crime and therefore you have to watch whatever they say with caution. Donna Chiarello took the stand, well, the whole purpose in the art of cross examination I submit to you is to find out the truth. Therefore when Mr. Levitt, my able adversary cross examined Mrs. Chiarello what did he harp on; you agreed to cooperate, you committed a crime too, you knew did you not that you could go to prison for certain amounts of time, not one time on that witness stand did Donna Chiarello say I agreed to

1
2 purjure myself. I agreed to lie, and I
3 agreed to do anything dishonest of any sort
4 in this courtroom.

5 No, think about it. As you will
6 recall the facts in this case and I must
7 tell you as Judge Pratt will, you are the
8 fact finders. It's your recollection of the
9 facts that control and I ask you if you
10 think about that testimony you will remember
11 that Donna Chiarello pled guilty to a crime
12 involving Title 18, Section 1708. That she
13 stole the Jacob Flusberg check from the
14 mail, the same crime but a different check
15 that the defendant here is charged with.

16 She took the stand, you remember she
17 said the only thing that the United States
18 would tell the court and I sit up and I said
19 that is an obvious fact is that she testified
20 in this case.

21 You also recall the fact that Judge
22 Pratt stated to you that he is the sentencing
23 judge, ask yourself ladies and gentlemen
24 with common sense is Donna Chiarello going to
25 take the witness stand and lie and commit

1
2 purjury in the very presence of the man who
3 will sit on judgment on her? Ask yourselves,
4 common sense and that is what this case is
5 all about.

6 How do you determine the believability
7 of a witness, well, you saw the witnesses,
8 you heard what Donna Chiarello said.

9 You heard what Inspector Klaus said,
10 you heard Mr. Indelicato, you look at them,
11 you judge them. Are they lying, or are they
12 not?

13 Are they nervous, are they evasive,
14 are they deliberately committing purjury
15 on the witness stand? It's you as people
16 of ordinary common sense like myself, you
17 judge people no differently in this
18 courtroom as you do them at home or any other
19 occasion. Remember also I asked Donna
20 Chiarello about immunity orders. There was
21 no agreement in this case that she wouldn't
22 be prosecuted for other checks in other crimes.
23 There was no agreement in this case that she
24 would be prosecuted for forgery which she
25 testified she did. She took the witness

1
2 said she signed every one of those checks,
3 she has no immunity from those prosecutions
4 at all.

5 She was charged with one thing, she
6 pled guilty to it. The agreement was that
7 she would take the stand, tell the truth and
8 that would be made known to the judge at
9 her sentencing in her case.

10 You remember I asked her what she
11 pled guilty to. Stealing one of the checks
12 in question here. She told you on the
13 witness stand she stole them, I submit to
14 you that it would be just too much to believe
15 that Donna Chiarello took that witness stand
16 and lied through her teeth. In fact, if you
17 recall during the course of this trial it
18 was the defendant not the government who
19 introduced Donna Chiarello's statement.

20 She gave the statement on March 11,
21 1976. In her written statement, signed,
22 sworn Inspector Klaus was there, another
23 inspector was there, she said on or about
24 December 3, 1975 I went to 868 217th Avenue,
25 Brooklyn, New York. I looked into mailboxes

1
2 for checks and took one check from the
3 mailbox which was United States Treasury
4 check 59349875 dated December 3, 1975, in
5 the amount of \$164.90.

6 Well, that is the Scala check. That
7 is the check that the defendant is standing
8 here on trial for. Payble to Giosebpina
9 Scala, 868 217th Avenue, Brooklyn, New York.

10 I signed the payee's name to the check
11 and gave it to my sister-in-law Barbara
12 Meyers who lives at 7313 13th Avenue,
13 Brooklyn, New York. Barbara gave me
14 approximately \$50 for this check. Well,
15 ask yourselves Barbara Meyers claims that
16 Scala was her relative. Giosebpina Scala
17 or Scala, I asked her on the witness stand
18 is Giosebpina Scala your relative and she
19 answered no. Is that address on your check
20 the address of the Scala that is your
21 relative? And the answer was no.

22 Did you look at the check and the
23 answer was no, remember the testimony, I
24 didn't even look at it, I just gave it to
25 Frank. That was the testimony you remember

1
2 Donna Chiarello's testimony, Barbara Meyers
3 drove the car to take Donna Chiarello to the
4 scene. Meyers told her that December 3rd was
5 the key day, the day that all Social Security
6 checks are received by all people in the
7 United States.

8 Barbara Meyers waited in the car while
9 Donna went out and stole it. She came back
10 Donna Chiarello signed that check, there is
11 no dispute about it.

12 In the car, where Barbara Meyers
13 was driving, in her presence the check was
14 signed, then they transported themselves
15 over to Frank's Corner. Well, Donna
16 Chiarello said that Barbara gave her \$50
17 for the check, any reason to lie about that;
18 no, ask yourselves as people of ordinary
19 common sense why did she get the \$50 for
20 the check? Why, why, what reason, why do
21 you get money for dealing in checks.

22 Obviously, you know they are stolen,
23 ask yourselves to use your common sense,
24 Frank, Frank took the stand, is there any
25 reason in the world, ladies and gentlemen of

1
2 this jury for you to expect Frank Indelicato
3 also of telling a lie? Ask yourselves why,
4 why should Frank lie, he is a store owner.
5 What did he testify to? On the day in
6 question December 3, 1975 Barbara Meyers
7 came in and she told him that check belonged
8 to her relative, did she not? In fact on
9 other occasions with respect to the other
10 checks that the government is interested at
11 this trial that Barbara Meyers said that
12 those were her relatives also. I cross
13 examined Barbara Meyers and asked her, is
14 Mr. Flusberg your relative also and she said
15 no. I asked her another question, Mr.
16 Hoffman, is he your relative, are any other
17 people your relative and her answer was no.

18 I submit to you that when people who
19 deal in crimes, ever deal in crime may never
20 think they're going to get caught.

21 I'll tell you how that applies to this
22 case.

23 There is no evidence in this trial
24 that Barbara Meyers signed any of those checks.

25 There is no evidence in this case

1
2 whatseover that Barbara Meyers placed the
3 first endorsement on these checks. Ask
4 yourself why and I think if you ask yourself
5 why you will come up with the answer and the
6 key to this case.

7 When Frank took the stand he knew
8 Barbara Meyers. He knew her, he knew her
9 so well that he gave her credit in the store,
10 yes, she took advantage of Frank. You better
11 believe she did, the man, the storeowner
12 he gives her credit and she comes in and
13 passed off forged checks, stolen checks,
14 but what is the significance of the relation-
15 ship between Frank and Barbara Meyers,
16 signed checks in front of checks correct?

17 You heard the testimony here, Donna
18 Chiarello signed all the checks in question.
19 You take them back into the juryroom, turn
20 them over, recall the testimony, ask the
21 court reporter to read it back and you will
22 see that what I am saying to you are facts.
23 Because, Barbara Meyers couldn't sign the
24 check Barbara Meyers because they would have
25 come right back to her. As luck would have

1
2 it they did come back, but I submit to you
3 that Barbara Meyers thought that if she
4 didn't have her signature on the check she
5 couldn't get caught.

6 She couldn't be charged with forgery,
7 she couldn't be charged with anything. And
8 that is why Barbara was outside all the time
9 signing the check. Rather dumb.

10 Barbara knew Frank, Frank knew Donna
11 casually. You remember his testimony, he
12 didn't remember if he could recognize her
13 or not.

14 Frank never saw Donna sign the name
15 and I submit to you when you are committing
16 a crime you never think you are going to
17 be caught. Because, if you think you are
18 going to get caught you are going to wind up
19 in the hands of a federal grand jury and
20 United States Courthouse and nobody who
21 thinks about the consequences of what they
22 do does it.

23 But when you do think about committing
24 a crime you want to do it the right way. You
25 don't want your name on it, you don't want

FBI experts or forging experts to trace the check to your name.

She thought she would get away with it. She didn't. Defense tried to show you that maybe Donna was in the store on occasion. Mr. Indelicato's testimony was clear, she was not in the store on any occasion with respect to the four checks, the one check in this indictment, at no time was she there, does he lie? Is that man lying? Is Mrs. Scala lying; who has the only motive to lie in this case. Who has the greatest personal stake in the outcome of the case? Who sits before you on the witness stand and tells you four checks I never looked at any of them. The Scala check I never looked at it, I ask you ladies and gentlemen of the jury is that credible testimony; is that believable testimony; ask yourself, is that the way it was?

However, perhaps in a bit more clever vein Mrs. Meyers took the stand on direct examination, the testimony was I knew Government's Exhibit 3 in evidence, the

1
2 to look at and listen to him on the witness
3 stand, to observe him, see what type of
4 person he is. To see how his testimony
5 was sizing up. To do anything you wanted
6 to sit in judgment of Inspector Klaus.

7 What did Mrs. Meyers say, put words in my
8 mouth, some nonsense there about a lawyer,
9 I talked about a lawyer you must be guilty.
10 Left her in the room, trying to make you
11 have the impression that Mr. Klaus got the
12 confession by coercion.

13 Yes, let me tell you about the
14 coercion. When Inspector Klaus went out
15 to the house on October 10, 1976 Inspector
16 Klaus testified that he had every right in
17 the world to arrest her at that time. No,
18 this is the action of a coercive, of police
19 brutality, of a man that sees there are a
20 couple of children in the house and says to
21 her well, come down tomorrow to United States
22 Post Office in Brooklyn, New York and we'll
23 talk about it then.

24 That is brutal ladies and gentlemen
25 of the jury, that is what you see on television,

1
2 That is what you hear about police brutality.
3 She wants you to believe that's what
4 happened in this case.

5 I ask you, do you, on March 10
6 Inspector Klaus went to the house, did he
7 strip the house, did he search the house,
8 did he pull out a gun; did he scream and
9 yell? Inspector Klaus said Mrs. Meyers
10 didn't cry. Well, I submit to you Inspector
11 Klaus is not lying. And I submit to you
12 Inspector Klaus' testimony that he decided
13 not to arrest her because of her children
14 is the absolute truth.

1
2 you will read it.

3 This certification proves that that
4 check was in the mail. Well, remember I
5 told you there were three elements in this
6 case. Not that the defendant has to know
7 that a check was stolen from the mail, that
8 the United States Congress has chosen to
9 pass Title 18 United States Code 1703 for
10 many reasons and one reason is to protect
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25 Scala talk to Mrs. Meyers and say go ahead,

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20 in this case.

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25 take the witness stand and lie and commit

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18 courtroom as you do them at home or any other
19 occasion. Remember also I asked Donna
20 Chiarello about immunity orders. There was
21 no agreement in this case that she wouldn't
22 be prosecuted for other checks in other crimes.
23 There was no agreement in this case that she
24 would be prosecuted for forgery which she
25 testified she did. She took the witness

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2 said she signed every one of those checks,
3 she has no immunity from those prosecutions
4 at all.

5 She was charged with one thing, she
6 pled guilty to it. The agreement was that
7 she would take the stand, tell the truth and
8 that would be made known to the judge at
9 her sentencing in her case.

10 You remember I asked her what she
11 pled guilty to. Stealing one of the checks
12 in question here. She told you on the
13 witness stand she stole them, I submit to
14 you that it would be just too much to believe
15 that Donna Chiarello took that witness stand
16 and lied through her teeth. In fact, if you
17 recall during the course of this trial it
18 was the defendant not the government who
19 introduced Donna Chiarello's statement.

20 She gave the statement on March 11,
21 1976. In her written statement, signed,
22 sworn Inspector Klaus was there, another
23 inspector was there, she said on or about
24 December 3, 1975 I went to 868 217th Avenue,
25 Brooklyn, New York. I looked into mailboxes

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2 for checks and took one check from the
3 mailbox which was United States Treasury
4 check 59349875 dated December 3, 1975, in
5 the amount of \$164.00.

6 Well, that is the Scala check. That
7 is the check that the defendant is standing
8 here on trial for. Payble to Giosebpina
9 Scala, 868 217th Avenue, Brooklyn, New York.

10 I signed the payee's name to the check
11 and gave it to my sister-in-law Barbara
12 Meyers who lives at 7313 13th Avenue,
13 Brooklyn, New York. Barbara gave me
14 approximately \$50 for this check. Well,
15 ask yourselves Barbara Meyers claims that
16 Scala was her relative. Giosebpina Scala
17 or Scala, I asked her on the witness stand
18 is Giosebpina Scala your relative and she
19 answered no. Is that address on your check
20 the address of the Scala that is your
21 relative? And the answer was no.

22 Did you look at the check and the
23 answer was no, remember the testimony, I
24 didn't even look at it, I just gave it to
25 Frank. That was the testimony you remember

Donna Chiarello's testimony, Barbara Meyers drove the car to take Donna Chiarello to the scene. Meyers told her that December 3rd was the key day, the day that all Social Security checks are received by all people in the United States.

Barbara Meyers waited in the car while Donna went out and stole it. She came back Donna Chiarello signed that check, there is no dispute about it.

In the car, where Barbara Meyers was driving, in her presence the check was signed, then they transported themselves over to Frank's Corner. Well, Donna Chiarello said that Barbara gave her \$50 for the check, any reason to lie about that; no, ask yourselves as people of ordinary common sense why did she get the \$50 for the check? Why, why, what reason, why do you get money for dealing in checks.

Obviously, you know they are stolen, ask yourselves to use your common sense, Frank, Frank took the stand, is there any reason in the world, ladies and gentlemen of

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2 this jury for you to expect Frank Indelicato
3 also of telling a lie? Ask yourselves why,
4 why should Frank lie, he is a store owner.
5 What did he testify to? On the day in
6 question December 3, 1975 Barbara Meyers
7 came in and she told him that check belonged
8 to her relative, did she not? In fact on
9 other occasions with respect to the other
10 checks that the government is interested at
11 this trial that Barbara Meyers said that
12 those were her relatives also. I cross
13 examined Barbara Meyers and asked her, is
14 Mr. Flusberg your relative also and she said
15 no. I asked her another question, Mr.
16 Hoffman, is he your relative, are any other
17 people your relative and her answer was no.

18 I submit to you that when people who
19 deal in crimes, ever deal in crime may never
20 think they're going to get caught.

21 I'll tell you how that applies to this
22 case.

23 There is no evidence in this trial
24 that Barbara Meyers signed any of those checks.

25 There is no evidence in this case

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whatsoever that Barbara Meyers placed the first endorsement on these checks. Ask yourself why and I think if you ask yourself why you will come up with the answer and the key to this case.

When Frank took the stand he knew Barbara Meyers. He knew her, he knew her so well that he gave her credit in the store, yes, she took advantage of Frank. You better believe she did, the man, the storeowner he gives her credit and she comes in and passed off forged checks, stolen checks, but what is the significance of the relationship between Frank and Barbara Meyers, signed checks in front of checks correct?

You heard the testimony here, Donna Chiarello signed all the checks in question. You take them back into the juryroom, turn them over, recall the testimony, ask the court reporter to read it back and you will see that what I am saying to you are facts. Because, Barbara Meyers couldn't sign the check Barbara Meyers because they would have come right back to her. As luck would have

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2 it they did come back, but I submit to you
3 that Barbara Meyers thought that if she
4 didn't have her signature on the check she
5 couldn't get caught.

6 She couldn't be charged with forgery,
7 she couldn't be charged with anything. And
8 that is why Barbara was outside all the time
9 signing the check. Rather dumb.

10 Barbara knew Frank, Frank knew Donna
11 casually. You remember his testimony, he
12 didn't remember if he could recognize her
13 or not.

14 Frank never saw Donna sign the name
15 and I submit to you when you are committing
16 a crime you never think you are going to
17 be caught. Because, if you think you are
18 going to get caught you are going to wind up
19 in the hands of a federal grand jury and
20 United States Courthouse and nobody who
21 thinks about the consequences of what they
22 do does it.

23 But when you do think about committing
24 a crime you want to do it the right way. You
25 don't want your name on it, you don't want

FBI experts or forging experts to trace the check to your name.

She thought she would get away with it. She didn't. Defense tried to show you that maybe Donna was in the store on occasion. Mr. Indelicato's testimony was clear, she was not in the store on any occasion with respect to the four checks, the one check in this indictment, at no time was she there, does he lie? Is that man lying? Is Mrs. Scala lying; who has the only motive to lie in this case. Who has the greatest personal stake in the outcome of the case? Who sits before you on the witness stand and tells you four checks I never looked at any of them. The Scala check I never looked at it, I ask you ladies and gentlemen of the jury is that credible testimony; is that believable testimony; ask yourself, is that the way it was?

However, perhaps in a bit more clever vein Mrs. Meyers took the stand on direct examination, the testimony was I knew Government's Exhibit 3 in evidence, the

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2 Flusberg check, I knew that was stolen.

3 Remember, Government's Exhibit 4 in evidence,
4 check made out to Francis A. Hoffman, I knew
5 that was stolen, but the check the grand
6 jury indicted on, that check I didn't know
7 it was stolen.

8 Other checks I knew, you can't prove
9 me guilty on checks I didn't know were
10 stolen. So, she takes the witness stand
11 and says yes. The evidence is too much
12 for me on the other check, even though I'm
13 not charged her with the other check,
14 nothing can happen to me, I'm not indicted
15 on those checks. The evidence is so
16 overwhelming I'll admit to stealing, but as
17 to the checks in question, no. I'll deny
18 it.

19 Maybe it's clever, but I submit to
20 you not to be the recipients of that fool-
21 hearty tactic on the witness stand.

22 Barbara Meyers was questioned by
23 Inspector Klaus, coincidentally Inspector
24 Klaus, case agent on this case sat here
25 through the trial. You had an opportunity

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2 to look at and listen to him on the witness
3 stand, to observe him, see what type of
4 person he is. To see how his testimony
5 was sitting up. To do anything you wanted
6 to sit in judgment of Inspector Klaus.
7 What did Mrs. Meyers say, put words in my
8 mouth, some nonsense there about a lawyer,
9 I talked about a lawyer you must be guilty.
10 Left her in the room, trying to make you
11 have the impression that Mr. Klaus got the
12 confession by coercion.

13 Yes, let me tell you about the
14 coercion. When Inspector Klaus went out
15 to the house on October 10, 1976 Inspector
16 Klaus testified that he had every right in
17 the world to arrest her at that time. No,
18 this is the action of a coercive, of police
19 brutality, of a man that sees there are a
20 couple of children in the house and says to
21 her well, come down tomorrow to United States
22 Post Office in Brooklyn, New York and we'll
23 talk about it then.

24 That is brutal ladies and gentlemen
25 of the jury, that is what you see on television,

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2 That is what you hear about police brutality.
3 She wants you to believe that's what
4 happened in this case.

5 I ask you, do you, on March 10
6 Inspector Klaus went to the house, did he
7 strip the house, did he search the house,
8 did he pull out a gun; did he scream and
9 yell? Inspector Klaus said Mrs. Meyers
10 didn't cry. Well, I submit to you Inspector
11 Klaus is not lying. And I submit to you
12 Inspector Klaus' testimony that he decided
13 not to arrest her because of her children
14 is the absolute truth.

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Are those the actions, ask yourselves, police brutality, coercive confession, involuntary confession. But that is what the defendant would have you believe in this case.

Let's take a look at the written admission of Barbara Meyers. Now, needless to say at this point this case, the evidence in this case is based in part on the very words of the defendant herself.

And at the opening I told you you would hear testimony about what the defendant had to say about this crime. Well, you heard the testimony under oath, affidavit through Inspector Klaus this case involved a full signed sworn statement under oath. What is interesting about this statement is Mrs. Meyers in the statement says I knew that scholar check was stolen. I knew it at the time, how could he not have, it was a plan. The case didn't start on December 3rd, it started on December 2nd with a conversation. They both agreed prior to that to go rip off a couple of United States Treasury checks. She was in the car, the check came to her, she cashed it. Why did she cash it, she knew Frank.

She knew Frank, she took advantage of Frank in this situation as much as she was trying to take

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2 advantage of you in this case. A person that is
3 kind to her, she went to him and got money never
4 thinking of two minutes that she would get caught
5 because her name was not on a check. If that is
6 not the best evidence of a criminal mind, criminal
7 intent, or common scheme and plan in this case, I
8 don't think the United States Attorney can bring it
9 to you for your consideration any better evidence.

10 What was the purpose of Government's Exhibit
11 4? The check for Frances Hoffer, Government's
12 Exhibit 2, a check, A. Wallowitz, Government's
13 Exhibit 3, a check to Jacob Flusberg. Well, if
14 you recall with respect to the November 13 check,
15 Mrs. Chiarello figured that Barbara took it. I mean
16 the address there ladies and gentlemen is clear.
17 That is where the mother-in-law lived. That is why
18 they're in the building. She took it up, Barbara
19 agreed to take it and cash it, Barbara didn't take
20 that check to Frank's place. She took it to Key Food
21 store, the other check, the Flusberg, Hoffman, all
22 checks that Donna Chiarello stated she got money for
23 committing a crime. You don't commit a crime for
24 nothing. You don't go out and risk serious conse-
25 quences for your actions for no reason. But, Barbara

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2 Meyers would be able, she didn't get a dime out of
3 the deal. Yes, she didn't get a dime out of the deal,
4 is that believable?

5 These checks were introduced into evidence
6 by the Government to show you not that Barbara Meyers
7 is a bad character or a character that is no good
8 in any way. Not to show you that she committed the
9 crimes on other occasions and therefore she committed
10 them on this occasion. But, to show you that this
11 is the plan, this is a scheme, these similar acts
12 done before December 3rd and done after December 3rd,
13 1975 shows that she had an intent and motive and a
14 plan and a design and you may consider that as a
15 judge will tell you as to whether or not you find
16 the defendant guilty on the charges contained in this
17 indictment.

18 That is why we introduce it into evidence.
19 And that is why it can be considered by you solely
20 for that purpose as Judge Pratt will tell you.

21 You realize that my cross-examination of the
22 defendant wasn't too lengthy, a couple of things I
23 asked her. Do you know I never looked at the check,
24 never got any money, a complete denial, never said
25 anything to Frank, walked in there with blinders on

2 and gave the check. She admitted on her own case
3 when Mr. Levitt asked her were you ever convicted
4 of a misdemeanor the answer was yes. On cross-
5 examination I asked her what was that conviction for.
6 On April 5, 1976 Mrs. Meyers was convicted of
7 criminal possession of stolen property. Again, we
8 don't rely on that to establish that she committed
9 the crime here. But, we do use that information
10 to show you that bears on the believability, or
11 credibility or the truth worthiness of the witness
12 on the witness stand.

13 A person is involved in possession of
14 stolen property who is convicted of it as recently
15 as April 1976, is she to be believed? Is the same
16 person who has the only motive in this case to lie,
17 the defendant, is that person to be believed: I
18 submit to you when you go back to the jury room and
19 you think about the story that she gave you, and
20 you put together the facts in this case, each and
21 every one of you will say beyond a reasonable doubt
22 it's just unbelievable. And to do that, all you have
23 to do is read what Barbara Meyers said to the Postal
24 Inspector on March 11, 1976.

25 Well, the idea I submit on cross-examination

of Inspector Klaus was to try to make the jury think that this was an involuntary statement punched out of her, or at least put that idea into your head.

Remember at the beginning these things were going to pop up during the trial. All to throw you off the road, get you off the path, to get you off the path of the three elements of the crime that the Government had established beyond a reasonable doubt.

Barbara Meyers said on March 11, 1976 under oath I asked her if she knew what the other meant in this courtroom and I asked her if she knew what the other meant, then she said she did. She admits to things she knows is stolen, she admits to scholar check here in the courtroom. The pressure is on, the jury is ready to deliberate. She didn't know it was stolen. Read her words in her own handwriting, yes, assisted by Mr. Klaus, that is no uncommon procedure for a United States agent to sit with somebody who is willing to tell the truth at that time and confess to a crime. And that, ladies and gentlemen, is the most powerful evidence the United States Government has in this case.

The very words of the defendant herself,

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2 which reads as follows:

3 "I, Barbara Meyers live at 7313 13th Avenue,
4 Brooklyn, New York. My date of birth is June 20,
5 1940 and my social security number 064-34-1645.
6 On or about January 24, 1974 I got a Blue Shield
7 check number 32849886 dated 10/18/73 in the amount
8 of \$115 payable to Vincent Bonomo, 211 Bay 11th
9 Street, Brooklyn, New York, from a guy, I thought
10 was Vincent Bonomo."

11 You heard testimony, you heard cross-examina-
12 tion. The checks were in front of her, yes, they're
13 in the hands of the United States Postal Service
14 and they're sitting there on the table and as this
15 statement was being written, Inspector Klaus had
16 the checks like I have them here. I cannot nor can
17 you nor can the witnesses look at these checks and
18 remember the serial numbers. So, quite naturally
19 they're on the table and they were used during the
20 course of the written statement, the check had not
21 been signed so when I cashed the check at Bonvy
22 Enterprises at the corner of New Utrecht Avenue and
23 76th Street, I signed Vincent's name to the check.
24 The first instance she signed somebody else' name
25 to the check who she thought was Vincent Bonomo on

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2 or about December 3rd, 1975 my sister-in-law Donna
3 Chiarello came to my house with United States
4 Treasury check number 59349875. That was we all
5 know the check in question. The Scala check
6 dated December 3, 1975 in the amount of \$164.90,
7 payable to Josephina Scala, 862 17th Avenue, Brooklyn,
8 New York.

9 She wanted to know if I know someone and
10 remember Mr. Levitt showed you, well, tried to
11 give you the impression that Mrs. Meyers didn't
12 have a legal education or medical education, or she
13 wasn't the most brilliant person in the world. I
14 submit to you based on the evidence in this case
15 she was quite the bright person, yes.

16 This statement was taken by Mr. Klaus in
17 conjunction with Barbara Meyers. Mr. Klaus testi-
18 fied in assisting the procedure to have the witness
19 use their own terminology. You know that is the
20 way Mrs. Meyers spoke. That is the way she wrote
21 the United States Postal Service -- is not going
22 to alter the speaking manner of a witness, specifical-
23 ly the defendant in a criminal case.

24 She wanted to know if I knew someone who could
25 cash the check, we all know who that person was.

2 Barbara Meyers had easy access to a person who would
3 cash the check. At that time I know the check was
4 stolen. At that time I know the check was stolen,
5 what are they telling you here in this courtroom for
6 two days? She knew the check was stolen after Frank
7 told her and a couple of months later it was stolen.

8 I submit to you that that is absurd on its
9 face. It's a deliberate attempt to avoid the issues,
10 sidetrack the issues and make you think that that
11 is true.

12 And I submit to you read Barbara Meyers' own
13 words, listen to the testimony of Donna Chiarello
14 about that check. I took her to a store, called
15 Friendly Corner. Well, she had to meet Barbara
16 Meyers somewhere, rather Barbara Meyers had to meet
17 Donna Chiarello somewhere, she had to take her to a
18 store like Inspector Klaus told you, not everything
19 is written down in a statement. Just like it took
20 two days to pull out the facts in this case the whole
21 case doesn't appear on a two-page statement. So,
22 she had to take her to Friendly Corners, from where
23 it doesn't say. Remember, Mrs. Meyers' testimony
24 on the witness stand, I saw the check for a second,
25 I didn't even look at it. I possessed it for a

second, believe that, I took her to a store called Friendly Corners at 7101 New Utrecht Avenue, Brooklyn, where she cashed that check.

I got no money from this check. Remember the testimony, walk in that store Mr. Indelicado has a pretty good memory, he has the check up on his wall, stuck for the money. Mrs. Scala had a pretty good memory, what happened on December 3rde she didn't get her support money. And then cross-examination the defense tries to play it minor thing to deal with Inspector Klaus, the time was 11:00 o'clock and it was 1:00 o'clock, it was 2:00 o'clock. Is that the only thing Inspector Klaus fumbled on, is there anything else?

I submit, if I asked each and every one of you as to the exact time this case started yesterday I don't think any one of you could tell me, neither could you tell me the color of the tie I was wearing. Was that material or important, but I remember, you bet I remember the testimony that came from the witness stand and indeed Inspector Klaus remembers what was said on March 10th and March 11th.

A case didn't happen yesterday, but the defense would have you believe that maybe because he

10 1 didn't remember a time everything he says is a lie.

2 It's confession. This statement goes on, on several
3 occasions I would meet Donna at which time she would
4 have several checks in her possession. There were
5 about six checks I helped, again in the present form
6 I know I helped.

7 Clearly collaboration of Inspector Klaus'
8 testimony.

9 He didn't play around with the words, but that
10 is the way she talked. That is it. I helped, she
11 would like you to be able -- the -- only at the time
12 she spoke to Frank, Frank told her, I know that the
13 checks were stolen from the mail. At the beginning
14 of this case you didn't have to prove the Government
15 was under any obligation to prove the checks came
16 from the mails. I also told you that you proved it
17 anyhow because Barbara Meyers knew Donna went into
18 the building, walked out with the check, went to
19 Friendly Corner. Is there any question in your mind
20 about it?

21 Now, I told you in the beginning of the trial,
22 at least maybe I alluded to it, a courtroom is nothing
23 more than a vacuum. You start here with nothing and
24 you reconstruct facts all within the scheme and scope
25 of our rules of evidence. Legal rules which allow

us to admit things into this courtroom and have you here observe and make a determination on them. Reconstruction, that is what we have done. These events happened in 1975. A criminal case is like a puzzle foundation. You build a house and start with a little foundation. That is exactly what we have done here. We have taken step by step by step to reconstruct exactly what happened. I submit to you that we have done that beyond a reasonable doubt.

What is beyond a reasonable doubt, Judge Pratt will tell you it's a duty found in reason that you must have doubt, founded in reason as to why the defendant Barbara Meyers is not guilty of crimes charged.

Elements first that the contents of the letter was posted and sent through the mails. I showed you that has a doubt about that.

Second, that the letter and its contents were stolen, taken, embezzled or extracted from the mails. You have a doubt about that, you heard the testimony of Mrs. Scala. She went to her mailbox expecting a check; that check wasn't there. You heard the testimony of Donna Chiarello, she pled guilty to being a thief and she was a thief in

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2 this case. If you don't believe Donna Chiarello,
3 take a look at the statement of the defendant. It's
4 that she knew it was stolen and if you don't believe
5 that possession of a recently stolen property, if
6 it was stolen, presumes that the views knew it to
7 be --

8 MR. LEVITT: I am going to move to have it
9 stricken. It is not a summons, it's permissible
10 inference under certain circumstances I think
11 it's very misleading.

12 THE COURT: I'll charge the jury on the
13 point, but I think the proper description is that
14 it's a permissible inference. I'll explain it
15 in more detail. Please disregard counsel's
16 remarks as to presumption.

17 MR. TEITLER: The defendant had the check
18 in her possession, her possession, in her hand.
19 This Friendly Corner fellow Frank told you she came
20 in with the check. She herself told you, well, she
21 didn't really, she didn't look at it and admit
22 anything about it. She had it in her hand, that
23 is possession. Donna Chiarello told you she got
24 in the car given to Barbara, Donna has it in her
25 hand. The fourth element that defendant Barbara

2 Meyers knew at the time in question that the check
3 was stolen. Isn't it doubting what the case is
4 all about because there aren't the first three
5 elements are undisputed, knowledge, where you can't
6 look into a man's head, you can't pull every piece
7 of brain, rip the cranium apart to find out, did you
8 know or did you not know, you look at the testimony,
9 you look at the word, you look at the believability,
10 and the fact, the circumstances to know whether
11 she knew or didn't know.

12 You look at what she said under oath before
13 this trial that she knew. You look at the testimony
14 of Donna Chiarello who said she knew. You look at
15 the action, you look at the deeds, look at how
16 the defendant conducted herself at the time of the
17 crime, you look at the fact that she never signed
18 the check in the presence of Frank. You look at the
19 fact she got money for the check. You look at the
20 fact that she admitted to you from the witness stand
21 that she knew she was dealing in two prior checks
22 that were stolen, you take all the evidence and
23 you ask yourself as United States Attorney, that
24 it's then only beyond a reasonable doubt. Ladies
25 and gentlemen, of the jury, I told you at the beginning

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2 I intended and I promised you that I would prove
3 this case beyond a reasonable doubt.

4 I submit to you as we go back into that
5 jury room, each and every one of you agree, and one
6 further note, Judge Pratt will tell you this is a
7 Court of law, you apply the law here and we don't
8 apply anything else and it's your obligation as
9 jurors, you took an oath to follow the law and
10 the charge of the Court and not to be swayed by
11 sympathy, side fact issues, red herrings, or any-
12 thing else. You and each of you swore that you would
13 uphold the duty to apply the laws to the facts of
14 this case as the Judge tells them to you without
15 sympathy, consideration. You are the fact finders
16 and I submit to you and request of you that when
17 you go back into the room look at the exhibits,
18 take them with you, keep in mind there was a full
19 statement here. There was further proof by
20 counsel, there is Barbara Meyers lied about what
21 happened in Frank's store, about what happened
22 with the Scala check. Ask yourself to take all
23 of these facts into the jury room, determine whether
24 or not they're the facts in this case and once
25 you do so, I ask you to return a verdict on behalf

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of the United States of America that the defendant
Barbara Meyers who is here before you is guilty as
charged of possessing the Scala check which was the
contents of the United States mails, knowing them
to have been stolen. I thank you for your time
patience and consideration.

(continued next page)

1 THE COURT: Thank you Mr. Levitt, Mr.
2 Taitler.
3

4 MR. TAITLER: Ladies and gentlemen,
5 as I told you before I will tell you again
6 despite the able job of my adversary, a
7 distinctive difference between what he said
8 and I said to you. I dealt with facts, of
9 a case. He dealt with speculation, argumentation,
10 possibilities.

11 What may have happened, what might have
12 happened, what possibly happened. I dealt
13 with evidence before you and what was in front
14 of you in exhibits. What you can take back to
15 the juryroom.

16 Mr. Levitt states about 30 seconds before
17 he concluded the witness said this is my
18 sister-in-law, I have my aunt's check cash
19 it. Is that the testimony?

20 The testimony was that Mrs. Chiarello
21 wasn't in the store on December 3, 1975. Mrs.
22 Meyers never said this is my sister-in-law, this
23 is my aunt's check cash it. The testimony is
24 clear that with respect to the other check
25 Mrs. Meyers stated these belong to my aunt,

1 relatives, obviously she had to because as
2 the testimony revealed Frank knew who she was.

3 Mr. Levitt argued before December 3,
4 1975 Mrs. Meyers never dealt in any checks.
5 That is what he said, and he stood up and he
6 accused me of making some sort of mistake in
7 my summation. All you have to do ladies and
8 gentlemen is take a look at Government's
9 Exhibit 8 in evidence and see that Mrs. Meyers
10 deals with a check October 18, 1973.
11

12 There was no prior checks involved here
13 and this was innocent. Look at the evidence,
14 see what Mrs. Meyers said. Testimony, December
15 3rd again, we hear it in summation, we heard
16 it in the trial. December 3rd Mrs. Chiarello
17 are you sure that wasn't wasn't a Sunday, yes.
18 Mrs. Chiarello, submit to you was not stating
19 anything wrong on the witness stand, she didn't
20 remember, she didn't remember, it's as simple
21 as that. A witness can't be more honest than
22 that if she remembers she said, she didn't
23 remember, she doesn't say.

24 December 3, 1975 was a Sunday, confuse
25 the witness. You will recall at the conclusion

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2 of the case I asked the Court to take judicial
3 notice that December 3rd was a Wednesday. She
4 said if it were a Sunday Mr. Levitt, I would not
5 have been there. It was not a Sunday it was
6 a Wednesday. The Judge so ruled.

7 Trying to put in different things to try
8 to make you think the facts are what they are
9 not. My learned adversary reads a question
10 about the grand jury and tries to give you the
11 impression I submit that Mr. Klaus testified to
12 something based upon his own personal knowledge.
13 Let me read it back to you, it's a very short
14 question, it was put by me as the United States
15 Attorney to Mr. Klaus. Tell the grand jury in
16 sum and substance what Mrs. Meyers said to you.
17 What the defendant said to you not what Mr.
18 Klaus thought to be the case. In substance
19 Mrs. Meyers said that her sister-in-law Donna
20 Chiarello went to Barbara Meyers' home with the
21 check we discussed. Mrs. Chiarello wanted to
22 know if we could cash the check, or knew someone
23 that could cash the check the address being
24 1701 New Utrecht Avenue, Brooklyn where she
25 cashed the check, who cashed the check, the

1
2 answer the two people in the store, Barbara
3 Meyers and Donna Chiarello.

4 Barbara Meyers said that pin the blame
5 on Donna Chiarello. That is what Barbara Meyers
6 told Inspector Klaus. He so testified before
7 August 27, 1976 the grand jury. The relation-
8 ship between Donna Chiarello and Barbara Meyers
9 sister-in-law Mr. Levitt pointed it out, I
10 pointed it out from the witness stand. What in
11 God's name is the motive for Donna Chiarello
12 to lie? Sister-in-law, she told the same thing
13 in sworn statements March 11. Read it, compare
14 it with the minutes of the trial.

15 She said she got money from the check.
16 Donna swore that Barbara gave her money, why?
17 What motive does Barbara Meyers have to get
18 involved in this; obviously money. I asked
19 Barbara Chiarello if she's involved with
20 methodone and if she was involved with heroin.
21 Her answer was yes. We got the answer. That
22 is proof positive as to why her story is the
23 truth. She went out to steal checks to get
24 money, she didn't cash them, she needed the
25 money. You're looking at the person who got the

1 money for her.

2 She wasn't embarrassed to tell you she
3 was involved in heroin, that her husband died,
4 the same husband that was Barbara Meyers'
5 brother. That is why she needed the money.
6 And she had to help her, she had to help her,
7 who knew Frank who thought she couldn't
8 get caught because her name wasn't on the check.
9 Thought like all criminals that they never get
10 caught.
11

12 No time did Barbara Meyers talk to
13 Donna Chiarello, these statements pertain to
14 each person themselves. When an inspector is
15 questioning a witness or the only thing that
16 is relevant at that time is what that person
17 did. And because Donna Chiarello says at that
18 time I went, did not mean automatically she
19 didn't go with anybody else. The question was
20 directed to her as to what she did. Donna was
21 questioned separately. Think, Inspector Klaus
22 forces things out of her, you think he beat her?
23 If you listen to the argument of Mr. Levitt, that
24 is what he would have you believe.
25

(Continued on next page.)

1
2 Well, the case boils down to whether you
3 believe the defendant's own statement. If you
4 believe that alone I submit to you it's enough
5 to convict. Believe the statement of Donna
6 Chiarello, if you believe that alone it's
7 enough to convict.

8 If you believe the statement of Frank
9 Indelicato to who proved to you Donna Chiarello
10 was never there with respect to those checks,
11 and everytime Barbara Meyers had to lie and
12 said those checks belonged to relatives, if
13 you believed any one of those witnesses you
14 must convict the defendant.

15 I think the government pretty well
16 establishes and the defense established what
17 type of believability Mrs. Meyers has in this
18 case. This business of possessing stolen
19 property is not new in the sense that we have
20 shown she has been involved with other checks.
21 In fact solely as it bears on her credibility
22 we have shown cross examination, she was
23 convicted on April 5, 1976 of criminal possession
24 of stolen property, as the Court will tell you
25 that will in the proof she is guilty her, but

Teitler-rebuttal

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1
2 it will bear on her believability as a witness,
3 because it bears on her ability to tell the
4 truth and her honesty, or dishonesty. It's a
5 question of do you believe the government's
6 evidence, or do you believe the defendant.

7 If you believe the government's evidence
8 you must convict the defendant, since the
9 evidence produced here is produced beyond a
10 reasonable doubt, thank you.

United States of America vs.

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT

BARBARA MEYERS

DOCKET NO.

76 CR 392(S)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
1	28	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☐ WITH COUNSEL

HARD LEAVITT
(Name of counsel)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE

JAN 28 1977

TIME A.M.

P.M.

☐ NOT GUILTY. Defendant is discharged

There being a finding/verdict of

☒ GUILTY to superseding indictment

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating Title 18, U.S.C. Sec. 1708 in that on or about the 3rd day of December, 1975, the deft. did unlawfully have in her possession United States Treasury Check Number 59,349,875, dated December 3, 1975, payable to Giuseppina Scala, 8682 17th Avenue, Brooklyn, New York, 11214 in the amount of One Hundred Sixty Four Dollars and Ninety Cents (\$164.90), said check having been the contents of a letter stolen from an authorized depository for mail matter, the deft. knowing the same to have been stolen.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 3 years. On condition that the deft. serve in a jail type institution for a period of 3 months execution of the remainder of the sentence is suspended and the deft. is placed on probation for a period of 4 years. Probationary period to commence upon the release of deft. from confinement. If deft. files a Notice of Appeal within one week of sentence, then there is a stay of execution of sentence pending determination of appeal. If deft. does not file a Notice of Appeal within a week of sentence, then deft. to surrender on 2/4/77 at 10:00 A.M. (Notice of Appeal to be filed in forma pauperis). On motion of A.U.S.A. Edward Thompson 76 CR 392 is dismissed.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

[Signature]

CERTIFICATE OF SERVICE

November 25, 1977

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Stanley D. Barnett